

**State of Vermont
WATER RESOURCES BOARD**

**RE: Unified Buddhist Church, Inc., Hartland, VT (Permit No. ID-9-0271-2)
Docket No. WQ-04-06**

ORDER REGARDING PRELIMINARY ISSUES

(Issued April 15, 2005)

This order concerns certain preliminary issues arising from an appeal of Amended Indirect Discharge Permit ID-9-0271-2 (Amended Permit) issued on December 2, 2004, by the Department of Environmental Conservation, Agency of Natural Resources (ANR) to the Unified Buddhist Church, Inc., of Hartland Four Corners, Vermont (Applicant). The Amended Permit was appealed to the Water Resources Board (Board), pursuant to 10 V.S.A. § 1269, on December 30, 2005. The Appellants are the Lull's Brook Watershed Association, Inc., John and Amy Zelig, Sterling and Marion Monk, and Peter Gordon, each in their individual capacities.

On February 3, 2005, the Board's Chair issued a Prehearing Conference Report and Order (Prehearing Order) memorializing certain rulings of the Chair and establishing a schedule for motions and briefing related to standing and party status challenges and to the scope of the appeal. No party objected to the Prehearing Order and, therefore, on February 11, 2005, by its terms the order became binding upon the prehearing conference participants, the Appellants, the Applicant and ANR. Prehearing Order at 13-14, Item 24 (Feb 3., 2005).

On February 12, 2005, the Applicant filed a Motion Challenging the Party Status of John and Amy Zelig, but it did not challenge their standing nor the standing of the Lull's Brook Watershed Association, Inc. ANR did not challenge the standing or party status of any of the Appellants. On March 2, 2005, the Appellants filed a Reply to the Applicant's Motion Challenging Party Status.

On February 28, 2005, ANR filed a Motion to Limit the Scope of Appeal and supporting documents. On March 2, 2005, the Applicant filed a Motion for Partial Summary Decision, a Statement of Material Facts, and supporting Exhibits, including an affidavit for John Bruno, P.E.. On March 18, 2005, the Appellants filed a Memorandum of Law in response to the Appellants Motion for Partial Summary Decision, a Response to the Applicant's Statement of Materials Facts, and supporting Exhibits, including an affidavit for Rod Finley, P.E..

The Board held oral argument and deliberations on the preliminary issues addressed in the parties's motions and briefs on April 12, 2005. Based on the parties's filings and the oral argument of their counsel, the Board hereby orders:

1. The Lull's Brook Watershed Association, Inc., and John and Amy Zelig have standing to appeal pursuant to 10 V.S.A. § 1269, consistent with the standards articulated in Re:

CCCH Stormwater Discharge Permits, Docket No. WQ-02-11, Memorandum of Decision (March 21, 2003) and Board cases issued thereafter.

(a) The Applicant was provided an opportunity to challenge the standing of the Association by way of a motion filed in accordance with the Prehearing Order, Section XII, Item 3. The Applicant filed no such motion. Accordingly, the Board rules that the Lull's Brook Watershed Association, Inc., has organizational standing to bring this appeal.

(b) The Board denies the Applicant's Motion Challenging the Party Status of John and Amy Zelig. In accordance with Board Procedural Rule 18(B)(7)(eff. Jan.1, 2002), the Zeligs have provided the Board and the parties with a statement of the reasons why they have standing to bring this appeal. Notice of Appeal at 6-7, Section 7(c). The Applicant filed a timely motion challenging the Zeligs's party status, but did not file an objection and supporting memorandum challenging the Zeligs's standing. Since the Applicant did not avail itself of the opportunity to challenge the Zeligs's standing and the Zeligs have addressed to the Board's satisfaction the question of their standing consistent with recent Board precedent, the Board has determined that the Zeligs have standing to bring this appeal. Arguments about whether the Zeligs's have met the standards for intervention as of right or by permission pursuant to Board Procedural Rule 25 are simply not germane under current Board practice related to standing challenges.

2. The Board grants both ANR's Motion to Limit the Scope of Appeal and the Applicant's Motion for Partial Summary Decision. The Board concludes that, as a matter of law, the only question properly before the Board in the appeal of the Amended Permit is, as both the ANR and the Applicant assert, whether the modifications to the Applicant's previously approved septic system (being the increase in the size of the septic tank from 1,000 to 2,000 gallons, the tank's relocation, and the minimal changes shown on the revised engineering plans) should be reviewed de novo.

The parties have provided the Board with three uncontroverted documents issued by ANR: Indirect Discharge Permit No. ID-9-0271; Indirect Discharge Permit No. ID-9-0271-1; and the Amended Permit before the Board (Indirect Discharge Permit No. ID-9-0271-2). The -1 and -2 documents are amendments to Indirect Discharge Permit No. ID-9-0271: they approve changes to the same septic system approved in Indirect Discharge Permit No. ID-9-0271, and that system was designed and approved for the indirect discharge of treated domestic sewage from the Applicant's Dharma Center. The Appellants did not appeal Indirect Discharge Permit No. ID-9-0271 nor ID-9-0271-1, even though they knew about and participated in ANR's notice-and-comment process for these two approvals. Therefore, in the Board's opinion, design capacity and other design features of the septic system which were approved in Indirect Discharge Permits No. ID-

9-0271 as modified by ID-9-0271-1, that were *not* modified by the Amended Permit now before the Board, are not subject to the Board's review, consistent with the Board's prior ruling in Re: Town of Shoreham Wastewater Treatment Facility, Docket No. WQ-00-11, Memorandum of Decision on Preliminary Issues (May 2, 2001).

The Appellants argue that the waste discharging from the septic system authorized by the Amended Permit will be qualitatively different from that generated by the Applicant under Indirect Discharge Permit No. ID-9-0271-1, because the Applicant has decided to use low-flow toilets rather than composting toilets, as previously proposed. However, the Board concludes that, as a matter of law, "sewage," as defined by Indirect Discharge Rules § 14-300(a)(32), includes both "grey water" (used water) and "black water" (sanitary waste).¹ Therefore, it is immaterial what proportion of the sewage treated by the Dharma Center septic system is "black water" from flush toilets or "grey water;" what is material is that any such waste not exceed the design capacity of 9,500 gpd, as initially approved by ANR in Indirect Discharge Permit No. ID-9-0271-1. Since the Appellants did not appeal the design capacity approved in Indirect Discharge Permit No. ID-9-0271-1, the Board will not revisit this aspect of the septic system's design in the present appeal.

3. As reported in the Prehearing Order at 6, Section VIII.(B), Appellants's counsel observed that "if the Board ruled that the scope of the appeal was limited to just consideration of the septic tank, his clients were not interested in pursuing the appeal as their primary concern had to do with the water quality impacts of the Project on Lull's Brook." The Appellants did not object to the inclusion of this statement in the Prehearing Order by the February 11, 2005 deadline. See Prehearing Order at 13, Section XII., Item 24. Since the Board has concluded that the scope of this appeal is limited to the matters discussed in (2) above, this matter is dismissed, subject to the right of the Appellants to file a motion pursuant to Board Procedural Rule 34(C) or (D), if they so elect.

Dated at Montpelier, Vermont, this 15th day of April, 2005.

WATER RESOURCES BOARD

/s/ John F. Nicholls

John F. Nicholls, Chair

¹ Indirect Discharge Rules (eff. Apr. 30, 2003): "*Sewage* means waste containing human fecal coliform and other potential pathogenic organisms from sanitary waste and used water from any building, including but not limited to carriage water, shower and wash water, but does not include stormwater."

Concurring:

Lawrence H. Bruce, Jr.

Michael J. Hebert

Joan Nagy

John D.E. Roberts